

PURCHASING AND LICENSING COMMITTEE

12-0374R

RESOLUTION AUTHORIZING AN AMENDMENT TO THE AGREEMENT  
WITH BUILDING N, INC. RELATING TO THE BOAT SLIP ON THE  
EAST SIDE OF THE MINNESOTA SLIP.

CITY PROPOSAL:

RESOLVED, that city and Building N, Inc. entered into an agreement on or about June 4, 1999 (city contract no. 18439) related to the use of first boat slip on the east side of the Minnesota slip north of the pedestrian bridge; and

FURTHER RESOLVED, the parties desire to amend the agreement to update certain clauses of the agreement.

NOW THEREFORE, BE IT RESOLVED, that the proper city officials are hereby authorized to execute an amendment to the agreement, substantially in the form of that on file in the office of the city clerk as Public Document No. \_\_\_\_\_.

Approved:

  
\_\_\_\_\_  
Department Director

Approved as to form:

  
\_\_\_\_\_  
Attorney

ATTY GBJ:slw 7/20/2012

Approved for presentation to council:

  
\_\_\_\_\_  
Chief Administrative Officer

Approved:

  
\_\_\_\_\_  
Auditor

STATEMENT OF PURPOSE: The purpose of this resolution is to approve an amendment to the agreement with Building N, Inc. to update the agreement. The amendment updates the insurance requirement to current city standard and provides a defined term to the agreement.

**AMENDMENT TO AGREEMENT  
BETWEEN THE CITY OF DULUTH  
AND  
BUILDING N, INC.**

The Agreement (the "Agreement") between City of Duluth ("City") and Building N, Inc. ("Building N") relating to the use of the first boat slip on the east side of the Minnesota Slip ("Boat Slip") is amended as set forth below. Capitalized terms used in this Amendment but not defined herein shall have the meanings ascribed to them in the Agreement.

WHEREAS, the City and Building N entered into an agreement on or about June 4, 1999 (the "Agreement") under which the parties agreed to certain terms and conditions relating to the use and or lease of the Boat Slip, and

WHEREAS, the City has requested modifications to the Agreement, and

WHEREAS, the City and Building N wish to amend the Agreement to accommodate modifications requested by City as set forth herein

NOW, THEREFORE, in consideration of the mutual benefits contained herein, the parties agree as follows:

1. Paragraph 1 of the Agreement is amended as follows to add the underlined language:

1. Building N may, in its discretion, and subject to the restrictions in Paragraph 2 below, either use the ~~boat slip~~ Boat Slip itself, or lease such ~~slip~~ Boat Slip to a third party as a rental fee consistent with the fees charged for other boat slips in the Minnesota slip. A photograph identifying the Boat Slip is attached hereto as Exhibit A.

2. Paragraph 3 of the Agreement is deleted in its entirety and replaced with the following:

3. ~~—— If the boat slip is leased out to a third party, Building N shall pay one-half of the lease fee to the City.~~

3. If the Boat Slip is leased out to a third party ("Lessee"), Building N shall pay one-half of the lease fee to the City. Payment shall be made within thirty (30) days of receipt of the lease fee. All leasing of the Boat Slip shall be documented by a written lease agreement, a copy of which shall be provided to the City Facility Projects Specialist within five (5) days of execution.

3. Paragraph 5 of the Agreement is deleted in its entirety and replaced with the following:

5. ~~—— Lessees of the boat slip shall be required to provide public liability insurance covering use of the slip, in an amount not less than \$500,000, and any such insurance policy shall name Building N and the City as additional insureds.~~

5. Lessees of the Boat Slip shall obtain and maintain general liability in an amount not less than \$1,500,000 for bodily injuries and Five Hundred Thousand Dollars (\$500,000.00) for property damage. Such coverage shall include all Lessee's activities occurring on or within the Boat Slip. The City of Duluth and Building N, Inc. shall be named as an additional insureds on said policy of insurance. Such policy of insurance shall be approved by the City Attorney and shall contain 30-day notice of cancellation, non-renewal or material change provisions. The City reserves the right to require Lessees to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn.Stat. Sec. 466.04 are increased.

4. Paragraph 6 of the Agreement is deleted in its entirety and replaced with the following:

~~6. This Agreement shall become effective on June 1, 1999, and shall remain in effect until terminated by either party by not less than 30 days written notice to the other party. The Agreement may not be terminated during the months of April through October without concurrence of both parties.~~

6. This Agreement shall begin on April 1, 2012 and shall continue for a period of ten (10) years, unless terminated earlier as provided for herein. Either party may terminate this Agreement by providing the other party with at least thirty (30) days written notice. Notwithstanding the forgoing, the parties agree that this Agreement may not be terminated during the months of April through October without the mutual agreement of both parties.

5. The following paragraphs are added to the Agreement:

7. Records shall be maintained by Building N in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years. The City and/or its duly authorized representative shall have access to the books, documents, papers and records of the Building N that are related to this Agreement.

8. Building N hereby agrees to indemnify, save harmless, and defend the City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damage and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or Building N, and including any

and all damages to property to whomsoever belonging, arising out of, related to or associated with the use, maintenance or operation of the Boat Slip by Building N or Lessee.

9. Unless otherwise provided herein, notice to the City or Building N shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

City of Duluth  
Facility Projects Specialist  
1532 West Michigan Street  
Duluth, MN 55806

Building N, Inc.  
Attn: Ronald L. Anderson, Vice  
President  
525 Lake Ave S  
Duluth MN 55802

6. Except as specifically amended pursuant to this Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this Amendment and the provisions of the Agreement, the provisions of this Amendment shall govern.

IN WITNESS WHEREOF, the parties have set their hands the day and date first shown below.

**CITY OF DULUTH**

**BUILDING N, INC.**

By: \_\_\_\_\_  
Its Mayor

By: \_\_\_\_\_  
Its \_\_\_\_\_

Attest: \_\_\_\_\_  
Its City Clerk

Countersigned:

By: \_\_\_\_\_  
Its City Auditor

Approved as to form:

By: \_\_\_\_\_  
Its City Attorney

**EXHIBIT A**

Photograph of the Boat Slip



